

# **Exhibit 15 to Plaintiff's Response To Defendant's Motion for Summary Judgment**

FREEDOM COURT REPORTING

1

1 IN THE UNITED STATES DISTRICT COURT FOR  
2 THE MIDDLE DISTRICT OF ALABAMA  
3 NORTHERN DIVISION

4  
5 CASE NUMBER: 2:05CV194-T

COPY

6  
7 HAZEL M. ROBY, as Administratrix of the  
8 Estate of RONALD TYRONE ROBY, Deceased,  
9 Plaintiff,  
10 vs.

11  
12 BENTON EXPRESS, INC., et al.,  
13 Defendants.

14  
15 S T I P U L A T I O N

16 IT IS STIPULATED AND AGREED by  
17 and between the parties through their  
18 respective counsel, that the deposition  
19 of ROLAND BROWN may be taken before  
20 Leslie K. Hartsfield, at the offices of  
21 Beasley, Allen, Crow, Methvin, Portis &  
22 Miles, P.C., 218 Commerce Street,  
23 Montgomery, Alabama, 36103,

367 Valley Avenue  
Birmingham, Alabama 35209  
1-877-373-3660

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1 you would, please. There should be a  
2 sleeve because I usually put photos --  
3 those type things in sleeves rather than  
4 folders.

5 Q. (By Mr. Ross) One did not.  
6 It was in here like this (indicated).

7 A. Okay. That's fine. That's  
8 fine.

9 Q. I'll put the poppy paper  
10 back in there for you.

11 A. Okay. It would be in a  
12 sleeve rather than a folder because  
13 they'll slide out.

14 Q. Okay. The next item is No.  
15 42 on your listing appears to be some  
16 marking material for Qualcomm; is that  
17 right --

18 A. Yes.

19 Q. -- off their website? Does  
20 it state anywhere in there or do you  
21 know what Qualcomm's market saturation  
22 is as to what percentage of trucks out  
23 there have Qualcomm?

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1           A.       In 2002 according to I  
2     believe it's the American Trucking  
3     Association, at least 50 percent of  
4     trucks had it. This -- this talks about  
5     the fact that it's 20 years. It's been  
6     in existence for 20 years. It talks  
7     about the types of operations and it  
8     pretty well covers a lot of territory.  
9     But my experience is that the number of  
10    people with Qualcomm has increased  
11    tremendously especially since 911.  
12    There have been and -- and I know a -- I  
13    say I know. I know of a salesman with  
14    Qualcomm and he and I talk from time to  
15    time. And I know that their -- that  
16    their sales have increased since 2002.  
17    But in 2002 it was at least 50 percent  
18    and that was a conservative figure. I  
19    couldn't tell you an exact number now,  
20    but I know it's considerably more than  
21    50 percent.

22           Q.       I'm curious where that 2002  
23    50 percent figure comes from. Can you

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1 remember, can you point me to some sort,  
2 you know, that's my job is to verify  
3 these things. Where would I find that  
4 if I sought verification?

5 A. Well, I think you can -- I  
6 believe I may have in my documents  
7 something that talks about it. But I  
8 got that figure from the American  
9 Trucking Association if it's not in some  
10 of the printed material that's apart of  
11 my file, that's where I got it from the  
12 American Trucking Association in a  
13 survey they did.

14 Q. Since we're on the topic and  
15 so we don't lose the thought, if you  
16 want to look through your file and see  
17 if you can find it, I'm definitely  
18 interested in that.

19 A. If you would give me my list  
20 of documents I --

21 Q. Sure. We introduced one  
22 copy of it as an exhibit so let's --  
23 here you go (indicated). I don't see --

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1 it should be close to this --

2 MR. BOONE: Just to help  
3 out, I know this one talks about it.  
4 You mentioned it to me (indicated).

5 A. I thought it was this one.  
6 This was the one I was looking for.  
7 This may not be the one that I'm looking  
8 for, but it -- at least it refers to it.  
9 This is the fall of 2004 put out by  
10 Liberty Mutual Insurance Company which  
11 is one of the leading insurers in the  
12 trucking industry. And it says, Best  
13 and industry-accepted practices, Liberty  
14 Mutual organizes less -- I mean, best  
15 and industry-accepted practices program  
16 area which allows to insure and address  
17 certain programs. And then on the next  
18 page it says, GPS global positioning  
19 system, almost half of the companies  
20 have GPS -- companies with GPS had a  
21 medium crash frequency that was 20  
22 percent less than those that did not  
23 have GPS. And that's where I got the 50

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1 they have yet or not.

2 Q. 22, U.S. Express, do you  
3 know if they have it?

4 A. Yes, they do have it.

5 Q. As we get down this list,  
6 there's a hundred and we can go through  
7 a hundred but I don't think it's good  
8 use of our time to do that. But as we  
9 get into some of the smaller ones on  
10 that list, Benton is not on the list of  
11 the top 100 carriers.

12 A. I understand that.

13 Q. Arrow Trucking; for  
14 instance, I'm familiar with them, do you  
15 know if they have it?

16 A. Where are they based?

17 Q. Tulsa.

18 A. Yes, they do have.

19 Q. Roadlink from  
20 Jacksonville?

21 A. I'm not familiar with  
22 them.

23 Q. Rail, they're from

1 Marshfield, Wisconsin?

2 A. I'm not sure. I think they  
3 do but I'm not positive.

4 Q. Jack Cooper?

5 A. I'm not familiar with  
6 them.

7 Q. Carry autos mostly from  
8 Kansas City. Do you know?

9 A. That's what I thought they  
10 were but I'm not that familiar with  
11 their operation.

12 Q. And you haven't conducted  
13 any sort of survey to determine who has  
14 it and who doesn't, have you?

15 A. I have done some surveys in  
16 the past. I did a good bit of surveys  
17 back in the '99, 2000 area because I was  
18 considering GPS for the company I was  
19 working for. And I checked quite a  
20 few -- quite a few companies; for  
21 example, I checked with New England  
22 Motor Freight which is a carrier in the  
23 Northeast; they had it. I checked with



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1 Estes Express. Estes had it. Yes, I  
2 have done a survey on carriers who had  
3 it back in the '99, 2000 to 2001 period,  
4 yes.

5 Q. Did they have it at Virginia  
6 Tank Lines?

7 A. Yes, sir.

8 Q. They have it --

9 A. I had it put in there in  
10 2000. As a matter of fact, it was -- we  
11 got it completed not long before 911.

12 Q. Did they have it at Coral  
13 Industries?

14 A. They did not have it at  
15 Coral when I was there. They are still  
16 one, as I said, one of my consulting  
17 clients. I have recommended to them in  
18 my last visit there that they do it.  
19 And they have -- have asked me to get  
20 some figures together which I'm in the  
21 process of working on now to get a cost  
22 figure for them because I know what it  
23 was when I had it done at Virginia Tank

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1 Lines. But I've pointed out some of the  
2 advantages to Central Alabama Transport  
3 and -- which is the trucking division of  
4 Coral Industries. And they are  
5 seriously considering it and I have  
6 strongly recommended it to them.

7 Q. But as of right now, Coral  
8 does not have it?

9 A. Well, I don't -- I don't  
10 think they've done it yet. I think they  
11 are -- they are waiting to get the  
12 figures back from me. It would be  
13 Central Alabama Transport, not Coral.  
14 Because Coral is not an over-the-road  
15 operation. Central Alabama Transport  
16 is. Central Alabama Transport is the  
17 transportation division of Coral  
18 Industries.

19 Q. As I understand your  
20 opinions in this case, you believe  
21 Benton Express should have had Qualcomm  
22 or something similar, GPS?

23 A. Well, yes. I think they

1     should have -- should have had some type  
2     of a tracking system, GPS. Simply  
3     because they advertise that they have  
4     the latest in technology. On their web  
5     page, they present to their customers  
6     and potential customers that they have  
7     the latest in technology and certainly  
8     global positioning systems are the  
9     latest in technology. And plus the fact  
10    that if they're not going to have that  
11    they certainly need some tracking system  
12    and they need to have a plan, not only a  
13    plan, they need to have a procedure and  
14    they need to enforce a procedure for  
15    tracking.

16           Q.     I'm just talking about GPS  
17    alone at the moment. Is it your opinion  
18    that it is the industry standard now to  
19    have GPS in trucks?

20           A.     I -- I would say yes, that  
21    it's getting to be. It may not be  
22    totally the industry standard but it's  
23    getting closer to it and there's

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1 certainly a lot of indication that it is  
2 getting to be the trucking -- the  
3 industry standard, yes.

4 Q. So you would believe that  
5 Benton Express is in violation of that  
6 industry standard by not having it?

7 A. That or -- or some other  
8 system. Some type of tracking system,  
9 yes.

10 Q. So anyone who doesn't have  
11 it such as your other client, Coral  
12 Industries, would be in violation of the  
13 industry standard by not having GPS in  
14 their trucks?

15 A. Well, I think it depends --  
16 depends on the size of the fleet, the  
17 operation they carry on, what kind of  
18 safety procedures they have in place and  
19 are exercising. But yeah, I told Coral  
20 I think they're in violation of a safety  
21 tool that is -- that is vitally  
22 important to the safe operation of  
23 their -- of their Central Alabama

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1 Transport division.

2 Q. Do you know what it costs to  
3 have a GPS system in your truck?

4 A. When we installed it at  
5 Virginia Tank Lines, it was about -- I  
6 believe we were able to get it for about  
7 15- to \$1600 per unit plus there's a  
8 monthly maintenance fee on it.

9 Q. Do you know how much that  
10 is?

11 A. It depends on whether you  
12 use it for communication and tracking.  
13 We used it for the communication or  
14 dispatching of our trucks because --  
15 there's systems. There's one called  
16 OmniTracs. There's one called Qualcomm.  
17 And if you use both of them, the service  
18 charge is, depending on the area you  
19 cover, it can range anywhere from 20- to  
20 \$60 per unit.

21 Q. For smaller operators, that  
22 might be a cost prohibitive, do you  
23 agree?

1 experience as to what type of operation  
2 the company has as to whether or not  
3 they use Qualcomm?

4 A. No, I don't think it matters  
5 the type of operation they have. I  
6 think it matters in the -- in today's  
7 economy and in today's world of events  
8 and with the height of recognition of  
9 terrorism and hijackings, this type  
10 thing, and Benton certainly has  
11 recognized these are -- are threats.  
12 I -- I think the type operation you have  
13 the -- I don't think it necessarily  
14 relates to the type of operation. I  
15 think it relates to your emphasis on  
16 trying to -- to know where your trucks  
17 are. Certainly if you're going to  
18 advertise and you're going to promote to  
19 your customer base that you have the  
20 latest in technology, then I think you  
21 need to have the latest in technology  
22 and I think GPS falls into that  
23 category.

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1 Q. What benefit does the GPS  
2 have to the customers of Benton  
3 Express?

4 A. Well, it would have the  
5 opportunity; for example, if they're  
6 running from Atlanta to Pensacola, they  
7 can't track that shipment from the time  
8 it leaves Atlanta until it gets to  
9 Pensacola according to the testimony  
10 that -- that I've read. They have an  
11 in-house computer system that is a  
12 tracking system, but they can't tell a  
13 customer if that truck is in route from  
14 Atlanta to Pensacola, they can't say  
15 that your truck or the trailer with your  
16 shipment on it is going to be here at X  
17 hour. All they can do is -- is to work  
18 off of experience they've had and a  
19 pattern that has been set. If they  
20 had -- if they had Qualcomm or some GPS  
21 system, they can say that truck is 18  
22 miles south of Montgomery and his  
23 anticipated arrival time here is X

1 corporate -- the corporation of Benton  
2 Express.

3 And I think this accident  
4 actually happened in top management.  
5 That's what -- that's what caused this  
6 accident was the lack of an emphasis on  
7 compliance and safety and following  
8 their company policies and procedures.  
9 They've got a policy and procedure for  
10 checking in every hour. Now, I don't  
11 know why they didn't enforce it. It's  
12 not for me to say. That's for you  
13 people to pass judgment on that.

14 The other issue I have is  
15 that they have consistently as long as  
16 Mr. Stephens has been running this run,  
17 they have let him without -- based on  
18 what I've seen and all the evidence  
19 that's been provided to me by Mr. Boone  
20 from the discovery that you people have  
21 provided to us, there is nothing  
22 anywhere that indicates that Benton  
23 Express questioned whether or not



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1 drivers.

2 And then the other thing  
3 that goes back to the GPS and whether  
4 they had GPS or not, nobody that I have  
5 read or anything I have seen or read  
6 says GPS is a bad thing. You shouldn't  
7 have it. It's dangerous on trucks.  
8 Like CBs, there's -- there used to be  
9 CBs on every truck. There's now a  
10 regulation that says you can't have a CB  
11 on a commercial motor vehicle. Nobody  
12 said that having GPS on a truck is a bad  
13 thing. Everything that I've read talks  
14 about how good it is and how it can save  
15 you money. It can be efficient.

16 You mentioned cost. And I  
17 know you're running up in your mind and  
18 you're going to try to come back with  
19 the fact that Benton has 300 and  
20 something tractors and if they have to  
21 spend 12-, 1500, \$1800 on a truck that  
22 that's expensive. I'm sure Benton  
23 Express does a lot of things that are

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1 expensive. And -- and they --  
2 obviously there's a great expense in  
3 being in the trucking business. You  
4 say, well, you got this monthly charge  
5 that can run anywhere from 20- to \$60.  
6 Yes, you do have, but it depends on how  
7 much of that -- they don't really need  
8 the dispatching -- the dispatching  
9 segment or the dispatching element  
10 necessarily of that -- of that GPS  
11 system because they're pretty well  
12 dispatching terminal to terminal so they  
13 don't really need that. So they  
14 wouldn't have as much expense as other  
15 cases. But there's one thing for sure,  
16 if they had had GPS equipment on this  
17 truck, they could have and would have  
18 found this truck immediately. They  
19 would -- they would have either had a  
20 monitoring station in Pensacola or  
21 Atlanta or Jacksonville or wherever they  
22 chose to put the centralized monitoring  
23 system for the GPS tracking.

1                   And then the other thing  
2       that Mr. Bill Jones and I agree with is  
3       the fact that he testified and in his  
4       report to the Atlanta police department  
5       he said this is approximately an  
6       six-hour run. In his deposition, he  
7       testified that this is a five to six and  
8       a half hour run. So he and I agree that  
9       Mr. Stephens could not make this round  
10      trip and stay within the 11 hours of  
11      driving. And had they found this truck,  
12      had they taken him out of service in  
13      Atlanta when they should have and -- and  
14      had they had GPS to where they could  
15      locate it, they would have located it  
16      before it got into Montgomery, Alabama  
17      and ultimately cause this accident.

18           Q.       Any other opinions that you  
19      have that we haven't talked about now?

20           A.       I believe that covers them.

21           Q.       I think so too. One last --  
22      well, actually there may be more than  
23      one last question but just a random